IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

W.A.No.244 of 2007

AGAINST THE JUDGEMENT IN W.P.(C).No.482/2007 DATED 04/01/2007
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APPELLANT: PETITIONER:-

THANKAM CASHEW EXPORTERS, PALLIKKAL P.O.,
KILIMANOOR, TRIVANDRUM,
REPRESENTED BY ITS MANAGING PARTNER SHAHIR SHAH,
RESIDING AT MADAVOOR, PALLIKKAL P.O., KILIMANOOR,
TRIVANDRUM.

BY ADV. SRI.K.B.PRADEEP

RESPONDENTS/RESPONDENTS:-
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1. THE STATE OF KERALA, REPRESENTED BY THE SECRETARY,
   INDUSTRIES DEPARTMENT,
   GOVERNMENT SECRETARIAT, TRIVANDRUM.

2. THE KERALA STATE INDUSTRIAL DEVELOPMENT CORPORATION LTD.,
   KESTON ROAD, KOWDIAR,
   TRIVANDRUM-695 003, REPRESENTED BY ITS GENERAL MANAGER.

3. THE KERALA FINANCIAL CORPORATION,
   HEAD OFFICE, VELLAYAMBALAM, TRIVANDRUM-695 033,
   REPRESENTED BY ITS MANAGING DIRECTOR.

4. KOLLAM CASHEW MANUFACTURERS & EXPORTERS ASSOCIATION,
   VII/126, SR JUNCTION,
   KANNANALLOOR P.O., KOLLAM.

R1 BY SENIOR GOVERNMENT PLEADER SRI.M.R.SABU.
R2 BY STANDING COUNSEL SRI.M.PATHROSE MATTHAI (SR.)
ADV. SRI.SAJI VARGHESE
R3 BY STANDING COUNSEL SRI.L.MOHANAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 01/06/2007, ALONG WITH W.A.NO.241 OF 2007 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

H.L.Dattu, C.J. & K.T.Sankaran, J.

W.A.Nos.244 of 2007-E & 241 of 2007-E

Dated, this the 1st day of June, 2007

JUDGMENT

H.L.Dattu,C.J.

Though the petitioners are different but the cause of action and the reliefs claimed being common, the learned Single Judge has thought it to combine both the writ petitions and to pass a common order.

2. In these writ petitions the petitioners are seeking the following reliefs. They are:

> (i) to direct the 3rd respondent/Kerala Financial Corporation ("Corporation" for short) to consider 'One Time Settlement' application of the petitioners without insisting for remittance of any amount as a condition precedent and inform the OTS amount to the 2nd respondent/Kerala State Industrial Development Corporation forthwith, and
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> (ii) for a direction to the 3rd respondent to stop all recovery proceedings against the petitioners' units.

3. The petitioners in these writ petitions had borrowed certain amounts from the 3rd respondent Corporation. They have defaulted payment of the amount due to the Corporation. In view of the default committed by the petitioners, the 3rd respondent has initiated revenue recovery proceedings against the petitioners. It is at that stage, petitioners have approached the 3rd respondent Corporation to give them the benefit under the OTS Scheme. Their applications were rejected by the Corporation on the ground that they

have not deposited 10% of the outstanding balance amount as required under the Scheme. For reasons best known, the petitioners do not question the correctness or otherwise of the orders passed by the Corporation.

4. Now, in these Writ Appeals, the request of the appellants before us is to direct the respondents to consider their applications for the benefit of OTS Scheme without insisting on the payment of 10% of the amounts outstanding.

5. In our opinion, the reliefs sought for by the appellants cannot be granted by us. The Corporation has evolved a scheme for One Time Settlement. Under that Scheme, certain conditions are imposed for availing the benefits of One Time Settlement for defaulters of loan amounts due to the Corporation. An autonomous body can definitely come out a scheme imposing certain conditions. Unless and until the conditions so imposed are arbitrary or illegal, this Court will not be in a position to direct that the respondents shall not insist on the payment of 10% of the amounts outstanding. In that view of the matter, the request of the appellants cannot be granted by us.

6. In so far as the second relief is concerned, the same also cannot be granted by us for the reason that unless and until the appellants' applications were favourably considered by the 3rd respondent, the 3rd respondent cannot be directed to inform the 2nd respondent about the One Time Settlement that has been arrived at by the Corporation. In view of the above, we are of the opinion that the reliefs sought for cannot be granted.

7. Keeping in view all aspects of the matter, we are of the view that the learned Single Judge has committed no error to call for our interference and, therefore, the appeals require to be rejected and they are rejected. Ordered accordingly.

Consequently, I.A.No.93 of 2007 in W.A.No.244 of 2007 and I.A.No.92 of 2007 in W.A.No.241 of 2007 are also dismissed.

H.L.Dattu,
Chief Justice.

K.T.Sankaran,
Judge.

vku/DK.